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Antitrust Division
Department of Justice
601 D Street NW
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To Renata Hesse,

As a US citizen, and in accordance with the invitation posted in the Federal Register (Vol. 66, No. 229, p. 59452), I wish to have my comments concerning the proposed final judgment in the United States v. Microsoft Corporation case added to the Federal Register.

First, I think it is important to re-state the gist of the of case: Microsoft Corporation has been found guilty of illegally maintaining a software (operating systems) monopoly in violation of section 2 of the Sherman Act. This judgment has be reaffirmed upon appeal and now stands.

Given this judgment, I think any reasonable individual would find the terms of the proposed settlement wholly inadequate. The proposed restrictions (including opening of APIs, formation of an independent review board, and some requirements for licensing) do little or nothing to address the underlying problem—that Microsoft continues to illegally maintain and extend their monopoly position.

In the trial, the term "barrier to entry" was often used to describe this effect and the details bear further discussion. Microsoft continues to trap both users and software developers through a "web of software dependencies" that is, for many, nearly impossible to escape. The "web of software dependencies" that I refer to is the combined effect of:

1. secretive, restrictive, and anti-competitive licensing policies;
2. intentionally undisclosed, incompatible, and ever-changing specifications for file formats, network protocols, and APIs; and
3. destructive "embrace and extend" strategies designed to corrupt existing formats and protocols.

Once users and developers employ Microsoft products, they generally find that their data, time, and effort becomes locked within, for example, file formats which they cannot effectively access through non-Microsoft software or on non-Microsoft platforms.

These dependency problems are pandemic. As the trial demonstrated; the vast majority of personal computer users in the United States (both companies and individuals) are already ensnared. And even as the court considers options to remedy the situation, Microsoft has continued their practices and released new operating systems (the "Windows XP" family) that seek to further extend their exclusionary control. One of the most brazen of these actions is Microsoft's current attempt (called ".NET My Services") to become the sole gateway for authentication and payment systems for all on-line transactions.

In summary, the proposed settlement does little or nothing to fix the illegal and damaging behavior that has been clearly and repeatedly outlined during the case. What is needed is a court-ordered remedy that truly solves the problem. Here, I propose three requirements that any final remedy must include. These restrictions would immediately and directly benefit the US citizens and intuitions that have been victimized by the defendant's illegal actions. They are as follows:

1. Any remedy seeking to prevent an extension of Microsoft's monopoly must place Microsoft products as extra-cost options in the purchase of new computers. Thus, a buyer who does not wish to purchase Microsoft products with new computer hardware is not forced to do so. This requirement will have the effect of ending some of Microsoft's restrictive and anticompetitive licensing policies for new computer sales. And it has the added benefit of clearly itemizing the cost of the Microsoft products for consumers which would prevent Microsoft or computer sellers from claiming that any differences in price are insignificant. The ending of anti-competitive licensing terms for new computer sales is a critical and illegal choke-hold on the market that must be broken if competition is to flourish.
2. The specifications of Microsoft's present and future document file formats must be made public so that documents created in Microsoft applications may be read by programs from other makers, on Microsoft's or other operating systems. This is in addition to opening the Windows application program interface (API, the set of "hooks" that allow other parties to write applications for Windows operating systems), which is already part of the proposed settlement. This would help put an end to the trap of intentional incompatibilities and forced upgrades that Microsoft currently perpetrates.
3. All networking protocols used by current and future Microsoft products must be published in full and approved by an independent network protocol body. This is both a reasonable and workable requirement. The Internet was built and has famously flourished upon free and open standards and protocols. This requirement would prevent Microsoft from further extending its software monopoly by seizing *de facto* control of

the Internet through proprietary protocols and through corruption (*eg.* incompatible extensions) of existing open protocols and standards.

The effect of these restrictions would be the commoditization of many kinds of software. Like other mature markets which support healthy competition, Microsoft and any competitors would be driven to produce compatible products. Strategies would turn from the current wasteful processes of intentional incompatibility and proprietary lock-in towards competition based primarily upon the quality, price, and timeliness of the competitors' implementations. All parties wronged by the current lopsided monopoly situation would benefit as competition flourishes.

In view of the ever-increasing dependence of our country upon software for commerce, health, communication, transportation, and security, I urge the court to take a firm stance. Microsoft continues to demonstrate that it cannot be trusted to obey the law. Their continued growth into new markets creates an unhealthy software mono-culture which, as demonstrated by recent events, poses a significant risk to national security. Therefore, the court should take this opportunity to prevent future problems by reigning in Microsoft's monopoly and enforcing the antitrust laws that are in the best interest of this country.

I wish to thank the court for consideration of these recommendations.

Sincerely,

Edward H. Hill III, Ph.D.